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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 BMW OF NORTH AMERICA, LLC, et al.,  
12 Plaintiffs,  
13 vs.  
14 EUROTECH WHEELS, LLC, et al.,  
15 Defendants.  
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CASE NO. 08 CV 0171 JM (WMc)

**ORDER GRANTING JOINT  
MOTION FOR ENTRY OF AND  
ENTERING CONSENT  
JUDGMENT AS TO  
DEFENDANTS EUROTECH  
WHEELS, LLC AND EUROTECH  
RIMS, LLC**

17 The parties filed a joint motion for entry of consent judgment as to Defendants Eurotech  
18 Wheels, LLC, and Eurotech Rims, LLC. (Doc. no. 29.) Pursuant to the joint motion and for good  
19 cause shown, the court hereby **GRANTS** the joint motion and issues the following **ORDER**:

20 This matter having been opened to the Court upon the Complaint of Plaintiffs BMW of  
21 North America, LLC and Bayerische Motoren Werke AG (collectively, "BMW") against  
22 Defendants Eurotech Wheels, LLC, Eurotech Rims, LLC (collectively, "Eurotech"), Ryan  
23 Moalemi and Joshua Moalemi alleging trademark infringement under the Federal Trademark Act  
24 (the "Lanham Act"), 15 U.S.C. § 1114 and the common law of California; unfair competition and  
25 false designation of origin under 15 U.S.C. § 1125(a) and under the common law of California;  
26 trademark counterfeiting under 15 U.S.C. § 1114(1); unfair competition under Cal. Bus. & Profs.  
27 Code § 17200 *et seq.*; and as to Eurotech, design patent infringement under 35 U.S.C. §271;  
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1 Eurotech, having allegedly advertised and sold wheels in violation of BMW trademark and  
2 design patent rights;

3 Eurotech, having represented and warranted that its only warehouses for wheels that fit  
4 BMWs are three located at 6350 Nancy Ridge Road, Suite #104, San Diego, CA; and that it has no  
5 parent, subsidiary, or affiliated businesses of any kind that are involved in wheels for BMWs;

6 Eurotech, having represented and warranted that its total profits on challenged wheel  
7 designs are \$20,000 and \$10,000, respectively; and that its total profits on wheels bearing BMW's  
8 Roundel or M-stripes logo are \$20,000 and \$10,000, respectively;

9 Eurotech, without admitting any liability, and expressly denying same, solely to avoid the  
10 expense and distraction of protracted litigation, and wishing to settle its dispute with BMW  
11 amicably;

12 The parties having acknowledged the jurisdiction of this Court over them and the subject  
13 matter hereof; and

14 With the consent of BMW and Eurotech, and for good cause, IT IS DECLARED AND  
15 HEREBY ADJUDGED that:

16 This Court has jurisdiction over the subject matter hereof;

17 BMW has extensively used and advertised its "Roundel" logo, M-Stripes logo and "BMW"  
18 word mark in connection with its business of designing, manufacturing, distributing, offering for  
19 sale and selling motor vehicles and wheels;

20 BMW is the exclusive owner of valid and subsisting federal trademark registrations,  
21 including incontestable trademark registrations for its BMW "Roundel" logo, M-Stripes logo and  
22 "BMW" word mark (*see* Exhibit A hereto), and that BMW's Roundel logo and "BMW" word  
23 mark are famous; and

24 BMW AG is the owner of various valid and lawfully issued United States Design Patents  
25 for designs of vehicle wheels, including but not limited to U.S. Design Patent Nos. 515,491;  
26 514,999; 504,382; 493,404; 470,093; 532,358; 558,114; 560,585; 528,962; and 449,028  
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1 (collectively, the “BMW design patents”) (*see* Exhibit B), and BMW NA is the licensee of said  
2 patents in the United States.

3 1. Eurotech, its affiliates, agents, servants, employees, representatives, successors,  
4 assigns, attorneys-in-fact, and all those persons in active concert or participation with them who  
5 receive actual notice of this Consent Final Judgment by personal service or otherwise, including  
6 but not limited to Ryan Moalemi and Joshua Moalemi, and each of them, be and hereby are  
7 permanently enjoined and restrained from:

8 A. Ordering, accepting orders for, accepting shipment or delivery of,  
9 warehousing, manufacturing, importing, advertising or displaying (on the Internet or  
10 otherwise), marketing, promoting, offering for sale, selling or otherwise distributing, any  
11 wheels depicting, bearing, or in connection with BMW’s Roundel or M Stripes logo  
12 (whether standing alone or on a wheel center cap or other tangible item), or any colorable  
13 imitation thereof;

14 B. Depicting BMW’s Roundel or M stripes logo, or any other BMW logo, in  
15 Eurotech’s advertising, or making any trademark use of the “BMW” word mark, or  
16 colorable imitation thereof on or in connection with advertising, offering for sale,  
17 displaying, selling, or otherwise distributing wheels, including but not limited to using the  
18 phrase “BMW wheels” or the like in connection with its Internet- or other advertising or  
19 sales. Metatags, keywords or keyword advertising may not include the phrase “BMW  
20 wheels,” “BMW rims,” “M3 wheels,” “M3 rims,” “328 wheels,” “328 rims” or the like,  
21 and may not otherwise create a likelihood of confusion as to any connection between  
22 BMW and Eurotech, or as to the source, sponsorship, or approval of BMW’s or Eurotech’s  
23 goods. Eurotech shall cancel its registration of [www.eurotechbmw.com](http://www.eurotechbmw.com) and shall cease  
24 and desist from registering or using any domain name containing “BMW” or any other  
25 BMW Group mark;

26 C. Any trademark use of any other BMW trademark or colorable imitation  
27 thereof;  
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1 D. Doing any other act or thing, directly or indirectly, that is 1) likely to  
2 confuse, mislead, or deceive others into believing that Eurotech is connected with,  
3 affiliated with, sponsored by, licensed by, or approved by BMW, or that Eurotech's  
4 product or services are sponsored, licensed or approved by BMW; or that is 2) likely to  
5 dilute BMW's Roundel logo or "BMW" word mark;

6 E. Manufacturing, importing, ordering, accepting orders for, accepting  
7 shipment or delivery of, warehousing, advertising, displaying, marketing, promoting,  
8 offering for sale, selling, trading, disposing of for commercial gain, or otherwise  
9 distributing the wheel models identified in Exhibit C hereto, or any and all other wheels  
10 that are covered by the BMW U.S. Design Patent Nos. 515,491; 514,999; 504,382;  
11 493,404; 470,093; 532,358; 558,114; 560,585; 528,962; and 449,028.

12 2. Eurotech may make a "fair use" or "nominative use" textual reference, in the  
13 identical font, format, size, and color as, and no more prominently than the surrounding text, to  
14 "BMW" or to other BMW word marks solely to communicate truthfully that certain Eurotech  
15 wheels identified prominently as Eurotech wheels and/or by their third party supplier "fit BMWs"  
16 or are "for BMWs," or fit or are for specific BMW models (such as the M3). No BMW word mark  
17 may appear in any of Eurotech's advertised product or service names.

18 3. Eurotech shall, within thirty (30) days of entry of this Consent Final Judgment,  
19 notify in writing, with a copy to BMW, any and all third parties with which Eurotech has placed  
20 advertisements using BMW's Roundel logo, M-Stripes logo or trademark use of the "BMW" word  
21 mark, that such usage in advertisements must be removed immediately.

22 4. Eurotech shall, within thirty-five (35) days of entry of this Consent Final Judgment,  
23 through a duly authorized officer or director, certify in a sworn written statement that it has  
24 complied with and completed those actions ordered by paragraphs 1 and 3 herein.

25 5. This Court shall retain jurisdiction of this matter and over the parties thereto for the  
26 purpose of enforcing the terms of this Consent Final Judgment. The parties acknowledge that a  
27 breach of this Consent Final Judgment by Eurotech would result in immediate and irreparable  
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1 injury to BMW, that it would be difficult or impossible to establish the full monetary value of such  
2 damage, and that BMW would be entitled to reimbursement of its reasonable attorney's fees and  
3 costs.

4         6. Eurotech shall immediately provide a copy of this Consent Final Judgment to any  
5 and all of its parent companies, subsidiaries, affiliates, owners, officers, directors, partners,  
6 employees, agents, servants, representatives, successors, and assigns.

7         7. Eurotech shall wire \$25,000.00 to BMW AG in two installments, the first  
8 immediately for \$15,000 and the second by August 27, 2008 for \$10,000, in care of the Howrey  
9 LLP General Escrow account at Citibank FSB Washington, DC, account number 3700-5235,  
10 routing number 254070116, identifying on the wire transfer instructions that Eurotech is the party  
11 sending the wire.

12         8. Within ten days of the entry of this Judgment, Eurotech shall identify, in writing  
13 and with specificity, each of its sources, by company name and address, telephone number,  
14 principal individual contact, shipper, broker or other purchasing agent, and port of entry, for each  
15 of its wheels a) identified in Exhibit C hereto or otherwise covered by Section 1 E above.  
16 Eurotech shall also provide representative transactional documents sufficient to identify each of its  
17 different sources of such wheels.

18         9. In accordance with § 34 of the Federal Trademark Act, 15 U.S.C. § 1116, the Clerk  
19 of the Court shall notify the Commissioner of Patents and Trademarks of the entry of this Consent  
20 Final Judgment who shall enter it upon the records of the United States Patent and Trademark  
21 Office.

22         10. There being no just reason for delay, the Clerk of this Court is hereby directed,  
23 pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Consent Final  
24 Judgment forthwith.

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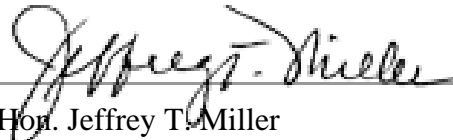
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1           The parties have consented to the entry of the foregoing Consent Final Judgment and waive  
2 any and all rights of appeal.

3           The Clerk of Court is instructed to close the file.

4           **IT IS SO ORDERED.**

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6           DATED: July 25, 2008

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8 Hon. Jeffrey T. Miller  
9 United States District Judge